

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: **Ralph A. Cowden III**
Application Number: **10/571,740**
Filing Date: **11/23/2007**
Atty. Docket No.: **4396-060415**
Confirmation No.: **6915**
Group Art No.: **1612**
Examiner: **Milligan, Adam C**
Title: **NUTRITIOINAL SUPPLEMENT AND PROTOCOL**

Honolulu, Hawai'i
June 7, 2009

RESPONSE TO RESTRICTION REQUIREMENT

VIA EFS WEB

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Attn: Mail Stop Non-Fee Amendment

Sir:

In response to the Office Communication mailed May 12, 2009, wherein the Examiner restricted the prosecution of the application, pursuant to PCT Rules 13.1 and 13.2, to Group I, comprising Claims 1-9, drawn to a nutritional supplement protocol; or Group II, comprising Claim 10, drawn to a kit for nutritional supplementation, Applicant files this election with traverse as follows:

Applicant elects to proceed with prosecution on the merits of Group I, comprising Claims 1-9, with traverse.

Applicant submits that there is unity of invention as regards to independent claims 1 and 10 of the subject invention in view of Kindness (US Pregrant Pub 2002/0182585).

Kindness teaches a combination and method using EDTA, cystine, zinc and selenium for anti-thrombin effect and for anti-platelet aggregation and measurement of

efficacy. Kindness teaches and claims a pharmaceutical dose of EDTA only in combination with cystine and not by itself. Claim 1 of the subject invention describes a nutritional supplement protocol, not an agent or protocol taught to address specific disease states. Claim 1 has as a specific limitation the use at the same time of an EDTA containing mouth rinse and an EDTA oral pharmaceutical. Claim 1 has as a further specific limitation a dosage defined by use "at least every five out of seven days." Kindness does not anticipate nor render claim 1 of Applicant's invention obvious.

The International Search Report issued by the USPTO as ISA on 16 February 2005 in the underlying PCT Application PCT/US04/30056, failed to identify Kindness or any other published art that the ISA deemed material to the patentability of claims 1 through 10. This is consistent with Applicant's analysis of the relevance of Kindness to the claims under examination.

There is "unity of invention" among the inventions described by claims 1 through 10 of the subject application because the inventions described by Applicant's independent claims 1 and 10 share the "special technical feature" that "define a contribution which each of the inventions considered as a whole, make over the prior art." PCT Rule 13.2. That contribution is a nutritional supplement protocol (and apparatus to carry out the protocol) comprising a dosage of EDTA taken both at the same time in a mouth rinse and oral pharmaceutical.

The method for determining unity of invention under PCT Rule 13 shall be construed as permitting, in particular, the inclusion of . . . (B) . . . and independent claim for an apparatus or means specifically designed for carrying out the said process. . . .

* * *

Also, an apparatus or means shall be considered to be specifically designed for carrying out of a claimed process if the contribution over the prior art of the apparatus or means corresponds to the contribution the process makes over the prior art.

MPEP § 1850.

"Although lack of unity of invention should certainly be raised in clear cases, it should neither be raised nor maintained on the basis of a narrow, literal or academic

approach. . . [E]ach case should be considered on its merits, the benefit of any doubt being given to the applicant.” *Ibid*.

Applicant reserves the right to file one or more divisional applications drawn to the non-elected invention. Upon indication of allowable claims, Applicant reserves the right to request that non-elected Claim 10 be rejoined pursuant to MPEP § 821.04.

Applicant submits that the present application is now in condition for examination on the merits and respectfully request the same. If any issues remain with respect to the Applicant’s election with traverse, the Examiner is cordially invited to contact Applicant’s representative at (808) 521-7080, business hours Hawaii standard time, or via email at <seth.reiss@lex-ip.com>, in order that the undersigned attorney may endeavor to resolve any outstanding issues as expeditiously as possible thereby to avoid prolonged prosecution of the present application.

This Response to Restriction Requirement is being electronically transmitted via EFS-Web this day HST (expected receipt on June 7, 2009, EST), within the shortened one-month statutory period allowed for reply. No claims have been added or amended and no further fees are due at this time.

Respectfully submitted,

/s/ Seth M. Reiss

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